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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,771	09/20/2000	Edward Joseph Urankar	7797XMQ	8740

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

COLE, ELIZABETH M

ART UNIT PAPER NUMBER

1771

DATE MAILED: 11/27/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

AS12

Office Action Summary

Application No.

09/665,771

Applicant(s)

URANKAR ET AL.

Examiner

Elizabeth M Cole

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-17, 20, 21, 26-34 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-17, 20-21, 26-34, 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 1771

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7, 9-12, 13-16, 26-28, 31-33 and 36 are rejected 35 U.S.C. 103(a) as obvious over WO 99/32060 to Rhim et al in view of Hollenberg et al, U.S. Patent No. 5,779,860 and Herron et al, U.S. Patent No. 5,137,537. Rhim et al discloses a thin until wet structure comprising a compressed web of cellulosic fibers. The web may be bonded with a temporary bonding agent such as polyvinyl alcohol. See page 12, line 25 - page 13, line 7. The temporary bonding means may also comprise hydrogen bonds. See 9, lines 22-26. The structure has a dry density of 0.3 g/cc and is disclosed as expanding rapidly to greater than 80% of its uncompressed thickness. See abstract. The web may further comprise non-cellulosic fibers such as conjugate fibers, such as polyester fibers. See page 11, lines 9-14. Therefore, although Rhim et al does not disclose the expanded wet density, CDH or expansion rate, since Rhim et al does disclose the same structure which employs the same materials and has the same beginning dry density, presumably the Rhim et al materials would inherently possess the claimed expanded wet density, CDH and expansion rate, or in the alternative, it would have been obvious to one of ordinary skill in the art to have optimized the web so that it expanded at the desired rate and had the claimed wet density and CDH in order to optimize the speed and ability of the material to absorb liquids. Rhim et al differs from the claimed invention because Rhim et al does not disclose employing a

Art Unit: 1771

wet strength binder. Hollenberg et al discloses a material comprising bonded cellulosic fibers. The fibrous material is absorbent, may be compressed so that it is quite thin when dry and then expands when wet. Hollenberg et al discloses that wet strength resins such as polyamide-epichlorhydrin resins are useful as bonding resins for the cellulosic fibers in order to impart resilience to the structure when wet. See col. 4, lines 35-65. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have added the wet strength resins disclosed by Hollenberg et al in order to enhance the resilience of the Rhim et al material when it is wet.

Rhim et al discloses a thin until wet structure as set forth above. Rhim et al also discloses a method of making a thin until wet structure comprising the steps of providing cellulosic fibers to form a structure, compressing the fibers and treating the fibers with a temporary binder such as polyvinyl alcohol. As set forth above, Hollenberg et al provides a motivation to include the step of applying a wet strength resin to the cellulosic fibers. Rhim et al does not teach employing cross-linked fibers. Herron et al discloses that employing cross-linked fibers in resilient, expandable cellulosic absorbent materials enhances the absorbency of the material. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed crosslinked fibers to form the material of Rhim et al. One of ordinary skill in the art at the time the invention was made would have been motivated to employ crosslinked fibers by the teaching of Herron that crosslinked fibers enhance the absorbency of the material.

Art Unit: 1771

3. Claims 17, 20-21, 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhim et al. Patent No. 5,800,41 in view of Hollenberg et al and Herron et al as set forth above, and further in view of Seger et al, U.S. Patent NO. 5,800,416. Rhim et al discloses a thin until wet structure as set forth above. Rhim et al differs from the claimed invention because Rhim et al does not disclose employing high surface area fibers such as crill. Seger et al teaches that incorporating high surface fibers such as crill enhance the absorbency of absorbent materials by providing capillary pressure to the fluid absorbent member. See col. 7, lines 18-46. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed high surface area fibers as taught by Seger et al in order to enhance the absorbency of the material of Rhim et al.
4. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rhim et al in view of Hollenberg et al and Herron et al as set forth above, and further in view of Lippert et al, U.S. Patent No. 4,861,652. Rhim et al discloses a thin until wet structure as set forth above. Rhim et al differs from the claimed invention because Rhim et al does not disclose performing a softening treatment on the absorbent article. Lippert et al teaches performing softening treatments on absorbent articles in order to enhance the softness of the material to enhance its conformability. See col.8, line 19 - col. 13, line 9. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have performed softening treatments on the material of Rhim et al in order to enhance the overall conformability of the article.

Art Unit: 1771

5. Applicant's arguments filed 9/5/02 have been fully considered but they are not persuasive. Initially, it is noted that in discussing the prior office action, Applicant refers to claim 36 as having been rejected under 35 USC 102(a). However, claim 35, not claim 36 was rejected under 102. Therefore, that portion of Applicant's arguments are not further addressed.

Applicant's amendments to claims 1 and 26 have over the 102(a) and 102(b) rejections. However, new rejections have been set forth above on the combination of Rhim et al with other references previously used to reject the dependent claims.

With regard to the use of the transitional phrase "consisting essentially of" MPEP 2111.03 states: "the transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. *In re Herz* , 537 F.2d 549, 551 - 52, 190 USPQ 461, 463 (CCPA 1976). When an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. *In re De Lajarte*, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). Thus, in the instant case, applicant bears the burden of showing that the additional component of an adhesion modifier in Miner would materially affect the basic and novel characteristic of the claimed invention. MPEP 2111.03 states: "For the purposes of searching for and applying prior art under 35 U.S.C. 102 and 103, absent a clear indication in the specification or claims of what the basic and novel characteristics actually are, "consisting essentially of" will be

Art Unit: 1771

construed as equivalent to “comprising.” See, e.g., PPG, 156 F.3d at 1355, 48 USPQ2d at 1355 (“PPG could have defined the scope of the phrase consisting essentially of” for purposes of its patent by making clear in its specification what it regarded as constituting a material change in the basic and novel characteristics of the invention.”).” Thus, in the instant case, Applicant bears the burden of showing that additional components in Rhim would make a material change in the basic and novel characteristics of the invention. Therefore, although Applicant’s arguments regarding Rhim and the various combinations of references not disclosing a material formed from cellulosic fibers only have been considered, these arguments are not persuasive because Applicant has not shown that any additional components would materially affect the basic and novel characteristics of the invention.

Applicant argues that Rhim teaches away from the use of crosslinked fibers, although Rhim does not mention crosslinked fibers, because Rhim states that wood fibers are undesirable. However, Rhim teaches that pulp fibers are no preferred because they tend to collapse. However, this cannot be seen as teaching against crosslinked fibers, since crosslinked fibers enhance the resiliency of the material.

Applicant argues that Rhim does not anticipate or render obvious the claim properties of the present invention, and that Rhim merely recites a laundry list of properties which would be desired in the final product without showing that the product actually has these properties. However, Rhim teaches a variety of structures as well as a variety of desirable properties which

Art Unit: 1771

these structures should possess. Thus, Rhim provides various embodiments which when employed will possess the properties of expansion, density, compression, etc.

With regard to the combination of Rhim and Hollenberg, Applicant asserts that this combination cannot be made by all of the web forming processes in Rhim are dry while Hollenberg teaches employing an aqueous medium to deliver the resin. However, it is not seen why one of ordinary skill in this art would not have been motivated to apply the wet strength resins of Hollenberg to the Rhim material. Since Rhim does not use these resins the material of Rhim is dry, but there is a motivation to employ the wet strength resins as set forth above. The use of the wet strength resins would not destroy the product of Rhim, but would enhance it with additional strength.

With regard to the combination of Rhim and Hollenberg with Herron, Applicant argues that there is nothing in either Rhim or Hollenberg which would lead one of ordinary skill in the art to desire more absorbency. However, in the field of absorbent articles for use in personal care, improved and/or increased absorbency is generally always desirable, since problems in this area arise due to insufficient absorbency rather than too much absorbency. In other words, a user of a personal care absorbent article will run into problems if the article fails by not absorbing, rather than if the article has extra absorbent capacity. The fact that other means of enhancing absorbency were known does not mean that one of ordinary skill in the art would not have employed the means disclosed by Herron.

Art Unit: 1771

With regard to the combination of Lippert and Rhim, Applicant argues that one of ordinary skill in the art would not have been led to use softening methods for films as a softening method for an absorbent material. However, the backsheet of Lippert may comprise a fibrous web. Therefore, the methods of softening a fibrous web would be suitable for softening the absorbent core of Rhim.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Art Unit: 1771

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.


Elizabeth M. Cole
Primary Examiner
Art Unit 1771

e.m.c
November 25, 2002